

**Notice of Allowability**

Application No.

09/963,790

Examiner

David J. Steadman

Applicant(s)

FARWICK ET AL.

Art Unit

1656

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on 9/4/07.
2. ☒ The allowed claim(s) is/are 5,9,12,34,35,37,38,44 and 51-54.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of the:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                     |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|  | 9. <input type="checkbox"/> Other _____   |

## **DETAILED ACTION**

### ***Status of the Application***

- [1] Claims 5, 9, 12, 34-35, 37-38, 44, and 51-54 are pending in the application.
- [2] Claims 5, 9, 12, 34-35, 37-38, 44, and 51-54 were previously indicated as being allowable over the prior art of record and claim 55 was withdrawn from consideration as being drawn to a non-elected invention. See Office action mailed on 8/24/07.
- [3] In the claim amendment filed on 9/4/07, claim 55 is now canceled.

### ***Examiner's Amendment to the Claims***

- [4] An examiner's amendment to the record appears below. These amendments are made to improve claim form and are not intended to change the scope or meaning of the claims. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Ms. Suzannah K. Sundby on 10/29/07.

- [5] The application has been amended as follows:
- In claim 35, replace ---consisting of SEQ ID NO:1 or a fragment--- with ---consisting of: 1) SEQ ID NO:1 or 2) a fragment---.
  - In claim 51, replace ---Corynebacterium--- with ---*Corynebacterium*--- and replace ---Escherichia coli--- with ---*Escherichia coli*---.

Art Unit: 1656

- In claim 52, replace ---*Corynebacterium glutamicum*--- with ---*Corynebacterium glutamicum*---.
- In claims 12, 44, and 54, replace ---*Escherichia coli*--- with ---*Escherichia coli*---.
- In claim 44, replace ---Top/pXK99EdeaD--- with ---Top10/pXK99EdeaD---.

### **Reasons for Allowance**

**[6]** The examiner can find no teaching or suggestion in the prior art of record for a nucleic acid encoding SEQ ID NO:2 or the complement thereof as encompassed by the claims. Therefore, claims 5, 9, 12, 34-35, 37-38, 44, and 51-54, drawn to a nucleic acid encoding SEQ ID NO:2, including SEQ ID NO:1 and fragments thereof as encompassed by the claims, the complete complement of SEQ ID NO:1, vectors, and host cells, are allowable over the prior art of record. Regarding claims 12 and 44, it is noted that the requirements for biological deposit have been satisfied. See particularly specification at p. 19, paragraph 62 and also p. 14, top of applicant's response filed on 3/18/04.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Steadman whose telephone number is 571-272-0942. The examiner can normally be reached on Monday to Friday, 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr Bragdon can be reached on 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1656

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Steadman, Ph.D.  
Primary Examiner  
Art Unit 1656